IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.MC.No. 3090 of 2007()

CC.194/2006 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

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PETITIONER: PETITIONER

RASIYA,W/O.ABDUL RASAK,
CHANDRAKANTHAM,THAMARASSERI,KOZHIKODE.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: RESPONDENTS

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1. K.K,.CHANDUKUTTY
S/O. SAMI, AGED 71 YEARS,
KAMMALAMKUNNATH HOUSE, THAMARASSERI,
KOZHIKODE.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3090 of 2007

Dated this the 11th day of October 2007

O R D E R

Was the learned Magistrate justified in invoking his jurisdiction to award costs in the facts and circumstances of this case? When adjournment is sought on the ground that the counsel had taken ill all of a sudden, can or should that jurisdiction be invoked to award costs, the panacea for all evils to a non party/stranger - even when such non-party/stranger is the Legal Services Authority? Thoughts on these aspects are aroused in this Criminal Miscellaneous Case.

2. The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act filed in 2006. The case was posted for trial to 11/9/2007. The learned counsel for the petitioner took ill suddenly and had to be taken to the hospital. It is submitted that the counsel was ready to go on with the trial but for his taking ill all of a sudden and unexpectedly. The counsel could not conduct the trial on that day. The matter was reported to the learned Magistrate. The learned Magistrate made the endorsement that there is no cross-examination for the petitioner and adjourned the case. Later, an application was

filed to recall the complainant for cross-examination. The impugned order shows that no objections were raised by the learned counsel for the complainant. The learned Magistrate however proceeded to pass the impugned order directing payment of an amount of Rs.500/- as costs to the Legal Services Authority. The petitioner claims to be aggrieved by the impugned order.

3. I have not ordered notice to the respondent/complainant as the impugned order clearly shows that the learned counsel for the complainant had not raised any objections against the prayer to recall the complainant for cross-examination. That appears to be evident from the further fact that cost has been ordered to be paid not to the complainant but to the Legal Services Authority.

4. The counsel are officers of the court and if the circumstances are true, any court must have certainly permitted adjournment of cross-examination of the complainant. When a counsel is reported to have taken ill suddenly and taken to the hospital, it certainly is for the court to take note of that circumstance and act accordingly. The counsel have no other

method of applying to excuse their absence. Officers and staff can of course apply for casual leave and leave the court. Counsel will have to make such representations before court. On facts there is no dispute that the counsel had taken ill on that day and Annexure A2 medical record clearly shows the correctness and acceptability of that submission. I accept that he had taken ill unexpectedly and all of a sudden before he could start the cross-examination.

5. The jurisdiction to award costs stems from the need to compensate the adversary for the loss and inconvenience suffered on account of the conduct - contumacious or otherwise, of a litigant. Of course incidentally the jurisdiction draws support for its very existence to the need to discipline and chastise the contumacious litigant. That dimension of the jurisdiction to award costs must also be alertly perceived. From the impugned order, I find neither aspect to be available in this case.

6. Further I do not, in the facts and circumstances of this case, find any justification in the direction for payment of costs to the Legal Services Authority. Courts have to be careful while

directing payment of costs to a non party/stranger even when such stranger is the State or the Legal Services Authority. In a situation like this where the Legal Services Authority does not at all come into the picture in the dispute that is raised, I am at a loss to understand why a direction has been made for payment of costs to the Legal Services Authority. Obviously because the learned counsel for the complainant did not raise any objection realising the plight of the learned counsel for the petitioner, such a direction appears to have been issued.

7. There may be rare instances when the conscience of the court is satisfied that parties or their counsel are collusively draining the time of the court or attempting to callously prolong the proceedings to the detriment of any non party, State or the Court itself. In such cases it may not be impossible to sustain a direction for payment of costs to the non party State or Legal Services Authority. But compelling and sufficient reasons and circumstances must be shown to exist before such a direction is issued. In an exceptional and fit case, adjournment of the case on account of genuine reasons attributable to the counsel may also result in undeserved hardship to the unfortunate adversary.

It is possible that the court may be compelled justifiably to award costs to such adversary also. I am unable to perceive any such circumstances in the facts of this case. But heartless and mechanical issue of directions for payment of costs to the non party Legal Services Authority, which trend I find is on the increase, has to be frowned upon. That explains this detailed order in this case. Judicial officers wearing the mantle of Legal Services Authority functionaries handle its funds and that is all the more reason to insist on very good reasons to justify such directions. Making justice appear to be done also is indeed a very onerous responsibility. No negative impression or messages, even unintentional or unjustified should be conveyed. No room for such impression should be left.

5. I am certainly satisfied that the impugned order warrants interference. Court below does not appear to have imbibed the fundamental concept that the counsel is an officer of the court and genuine grievance of the counsel must be taken care of by the court when representations to that effect are made and there is no dispute of the facts. Counsel are and ought to be partners in this sublime judiciary process of ascertaining truth

and justice. A sense of alienation from the process in the mind of the counsel would be at the peril of the sublime judicial process and the very system of which all of under Section are part of.

6. This Criminal Miscellaneous Case is in these circumstances allowed. The Impugned order is set aside. The petitioner shall be granted opportunity to cross-examine the complainant without any terms.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007